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Johnson v. *Southern Pacific Co.*, 196 U. S. 1, 17. On the other hand, the operation of a statute has been restricted within narrower limits than its words imported when the court considered that the literal meaning would extend to cases which the legislature never intended to include. *United States* v. *Kirby*, 7 Wall. (U. S.) 482. This rule, at best dangerous, is inapplicable here, as Congress may have desired to procure a high degree of care by imposing absolute responsibility. And the weight of authority is against the present case. *United States* v. *Southern Ry. Co.*, 135 Fed. 122.

TAXATION — COLLECTION AND ENFORCEMENT — ACTION AT LAW. — The United States brought *indebitatus assumpsit* to collect a sum due under the Spanish War Tax, which provided for a fine in case of non-payment. *Held*, that the action does not lie. *United States* v. *Chamberlain*, 5 The Law 202 (C. C. A., Eighth Circ., Oct. 17, 1907). See NOTES, p. 283.

TAXATION — GENERAL LIMITATIONS ON TAXING POWER — UNEQUAL TAXATION OF BANK SHARES AND OTHER MONEYED CAPITAL. — A New York statute imposed a tax of one per cent on the value of the stock of all banks organized under the laws of the state or of the United States, without any deduction for the personal indebtedness of the owners. In the case of taxes on all other personalty such deduction was allowed, but the tax rate was more than twice as high. *Held*, that there is no discrimination against national bank shares. *People ex rel. Bridgeport Savings Bank* v. *Feitner*, 120 N. Y. App. Div. 838.

The federal statutes provide that a state tax on national bank stock must not be at a greater rate than that upon other "moneyed capital." U. S. REV. STAT. § 5219. This is to prevent discrimination tending to discourage investments in national bank shares. *First Nat'l Bank* v. *City of Richmond*, 39 Fed. 309. But moneyed capital only includes money employed where the object of the business is the making of profit by its use as money. *Mercantile Bank* v. *New York*, 121 U. S. 138. Consequently, if the tax is void it is solely because the rate is higher on the stock of a banking corporation than on other moneyed capital, and this is a question of fact. In considering it the whole tax system must be considered rather than an exceptional effect in a peculiar case. *Pelton* v. *Nat'l Bank*, 101 U. S. 143. A difference in name or method of assessment is not a discrimination unless there is in fact a greater burden on national banks. *Nat'l Bank of Wellington* v. *Chapman*, 173 U. S. 205; *Van Slyke* v. *State*, 23 Wis. 655. The conclusion of the court seems justified in view of the fact that the small portion of moneyed capital not in bank stock and from which a deduction for debt is allowed pays a much higher rate than bank shares.

TAXATION — PARTICULAR FORMS OF TAXATION — STATE INHERITANCE TAX ON STOCK OF CORPORATIONS INCORPORATED IN SEVERAL STATES. — A New Hampshire testatrix bequeathed stock in a corporation incorporated in Massachusetts and in other states. *Held*, that the value of this stock for the purpose of the succession tax to be paid in Massachusetts is limited to the value of the franchise and property in Massachusetts which it specifically represents. *Kingsbury* v. *Chapin*, 82 N. E. 700 (Mass.).

This decision follows a recent New York decision commented on in 20 HARV. L. REV. 313.

TAXATION — PURPOSES FOR WHICH TAXES MAY BE LEVIED — STATE AID TO DISABLED FIREMEN. — A South Carolina statute provided that fire insurance companies doing business within the state should pay a percentage on local premiums to the state treasurer for the benefit of disabled members of fire departments. *Held*, that the statute is unconstitutional. *Aetna Fire Ins. Co.* v. *Jones*, 59 S. E. 148 (S. C.). See NOTES, p. 277.

TRESPASS TO REALTY — WHAT CONSTITUTES A TRESPASS — FORCIBLE EVICTION OF TRESPASSER BY OWNER. — A and B were adjoining landowners. Through an innocent mistake, A built a house partly on his own and partly on B's land. Five years thereafter B forcibly entered upon A, sawed the house in

two, and carried away the portion that stood on his land. A sued B in trespass *quare clausum fregit*. *Held*, that A can recover punitive as well as actual damages. *Bollinger* v. *McMinn*, 104 S. W. 1079 (Tex., Civ. App.).

Formerly an owner might assert his right to immediate possession by necessary force and plead his title in justification to an indictment for breach of the peace. 1 HAWKINS, P. C., 8 ed., 495. When deprived of this defense by later statutes, he still could not be sued in trespass *quare clausum fregit*. *Taylor* v. *Cole*, 3 T. R. 292; see *Harvey* v. *Bridges*, 14 M. & W. 437, 442. But it has been held that a tenant forcibly ejected may bring trespass against his landlord, because such act is criminal. *Thiel* v. *Bull's Ferry Land Co.*, 58 N. J. L. 212. The great weight of authority, however, is against such a result. *Low* v. *Elwell*, 121 Mass. 309; *contra*, *Dustan* v. *Cowdrey*, 23 Vt. 631. The minority view is based, not on sound principle, but on public policy, to preserve peace and to secure a resort to legal measures instead of physical force. The same public policy is invoked by the Texas court in the present case as the basis for allowing a mere trespasser to maintain trespass against an owner entitled to immediate possession. Such an unwarranted step beyond the view of the minority courts is *a fortiori* opposed to the great weight of decided cases.

BOOKS AND PERIODICALS.

I. LEADING LEGAL ARTICLES.

MATRIMONIAL DOMICILE AS A BASIS FOR DIVORCE. — Marriage is a status.[1] For many purposes a status may be regarded as an incorporeal *res* created by law. Of course, such a *res* can have no real situs, but since the state of the domicile has an especial interest therein,[2] a status is treated as if it had a situs there. Hence the law of the domicile alone may alter or terminate it.[3] This is peculiarly true of marriage. Therefore, in actions for divorce, which closely resemble actions *in rem*, domicile is an essential jurisdictional fact.[4]

Logically every marriage contains three domiciliary possibilities, (*a*) the individual domicile of the husband, (*b*) the individual domicile of the wife, (*c*) the matrimonial domicile — the place where the spouses reside as man and wife, *animo manendi*. In England the domicile of a married woman is, during coverture, merged in that of her husband.[5] She cannot obtain a separate domicile even for purposes of divorce.[6] It is also held that the husband's domicile is the single jurisdictional fact.[7] Accordingly in England the matrimonial domicile, in so far as it fails to conform to, or represents more than the domicile of the husband, is without effect upon jurisdiction. In America, however, the great weight of authority makes an exception to the general rule, and permits a

[1] Bell *v.* Bell, 181 U. S. 175; Le Mesurier *v.* Le Mesurier, [1895] A. C. 517; State *v.* Armington, 25 Minn. 29.

[2] Wilson *v.* Wilson, L. R. 2 P. & D. 435, 442 (marriage); *In re* Goodman's Trusts, 17 Ch. D. 266, 297 (legitimacy).

[3] Scott *v.* Sandford, 19 How. (U. S.) 393 (slavery); Eddie *v.* Eddie, 8 N. D. 376 (legitimacy); Maynard *v.* Hill, 125 U. S. 190 (marriage).

[4] Domicile should be the single jurisdictional fact. See 19 HARV. L. REV. 586. This is the case in England. Le Mesurier *v.* Le Mesurier, *supra*. But in this country Haddock *v.* Haddock, 201 U. S. 562, has superadded personal jurisdiction of the libellee in certain cases.

[5] Dicey, Conf. of Laws, 127.

[6] Dolphin *v.* Robins, 7 H. L. Cas. 389. But see *infra*, note 7.

[7] Warrender *v.* Warrender, 2 Cl. & F. 488. But see Armitage *v.* Atty.-Gen., [1906] P. 135; Armytage *v.* Armytage, [1898] P. 178.